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09/840,332

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Jerald A. Hammann

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DICKE, BILLIG & CZAJA

FIFTH STREET TOWERS

100 SOUTH FIFTH STREET, SUITE 2250

MINNEAPOLIS, MN 55402

EXAMINER

BOSWELL, BETH V

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/840,332	Applicant(s) HAMMANN, JERALD A.	
	Examiner ALISON KARMELEK	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 9, 2008 has been entered.
2. The following is a Non-Final office action in response to communications received June 9, 2008. Claims 31-40 have been amended and are pending in this application.

Response to Amendment

3. Amendments to claims 31-35 have been noted.

Response to Arguments

4. Applicant's remarks with respect to the Double Patenting rejection have been noted.

Applicant's arguments filed June 9, 2008 have been fully considered but they are not persuasive. In particular, Applicant argues that (1) Hailpern et al. does not teach or suggest the limitations of independent claims 31-35 of accepting, via a computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a

service date and a service time, see pages 10-11 of Remarks; (2) Hailpern et al. does not teach or suggest the limitations of independent claims 31035 related to wherein the at least one services date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available, see page 11 of Remarks; (3) Hailpern et al. does not teach or suggest the limitations of independent claims 31-35 related to wherein the capacity of the at least one composite resource is a measure of on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to product and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time, see pages 11-12 of Remarks; (4) Hailpern et al. does not teach or suggest the limitations of independent claims 3103 related to wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period, see page 12 of Remarks; (5) the amended limitation of independent claims 31-35 distinguishes the claims from the Hailpern et al. Patent, see page 12 of Remarks; (6) Hailpern et al. does not teach or suggest the limitations of dependent claims 36-40 related to wherein, when demand exceeds capacity for the at least one composite resource, the modifying includes decreasing demand for the at least on composite resource, the modifying includes decreasing demand for the at least one composite

resource and/or increasing the capacity of the at least one composite resource, see page 13 of Remarks.

5. In response to argument (1), Examiner respectfully disagrees. Examiner points out that the claim limitations recites "at least one of a service date and a service time" and thus requires these in the alternatives. Hailpern et al. does teach and suggest that parameter values are received from a business. These parameters represent the promotional or other deal with which the resource is being sold. Further, the location of the resource is specified as well as the time period for the transaction to occur. See at least column 2, lines 37-40 and columns 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45 and column 5, lines 1-6. Thus, Hailpern et al. does teach and suggest the requisite service location and **at least one of** a service date and a service time. Additionally, Applicant argues that since Hailpern et al. provides target groups of customers with a plurality of promotions for a plurality of goods in reference to "now", Hailpern et al. teaches away from the required date/time transaction parameter value. Examiner notes again that the date/time parameter is recited in the alternative.

Additionally, there is no recitation in the claim language that states the date/time parameter must be in the future. In fact, the claim states that the date/time parameter is either present, or "now", **or** in the future. Thus, Hailpern et al. does teach this limitation.

6. In response to argument (2), Examiner respectfully disagrees. Applicant argues that because "there is a time frame from the moment the promotion is communicated to its expirations representing when the product/service is available" the time-based expiration of a promotion has nothing to do with service availability as required.

Examiner asserts that Hailpern et al. teaches the limitation as recited above since the promotion, or the service, has at least one service date and a service time that indicates a present or future date and/or time when the service is available (i.e., the promotion period as defined by the predetermined period of time, col. 3, lines 1-5).

7. In response to argument (3), Examiner respectfully disagrees. First, Examiner note Applicant's argument that Hailpern et al. does not teach or suggest how to measure capacity as required by these recited limitation. Examiner notes that the limitations define capacity as a measure of the on-hand supply **and/or** availability, **if applicable**, of the **at least one** resource at a first date **and/or** time plus **a measure of an ability to produce and/or** make available additional quantities of the **at least one** resource over a first date **and/or** time period beginning at the first date **and/or** time and ending at a second date **and/or** time. Applicant argues that since Hailpern et al. does not disclose a future time, **other than an expiration time**, the Hailpern et al. method cannot measure capacity. Examiner notes that the first date and/or time period is the start time for the promotion and the end time is the expiration time. Thus, since Applicant agrees that Hailpern teaches a future time as an expiration time, Hailpern teaches the time period as claimed. Additionally, Hailpern et al. teaches a measure of capacity or inventory for a promotions which has a first and second date/time (col. 2, lines 35-45 and 51-65, col. 4, lines 20-45 and col. 5, lines 30-37). Additionally, Hailpern et al. teaches purchasing products at a comparatively low wholesale price in col. 2, lines 35-45, or a measure of an ability to produce and/or make available additional quantities. Thus, Hailpern et al. teaches a capacity defined as a a measure of the on-hand supply

and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time.

8. In response to argument (4), Examiner notes Applicant's argument recites the same argument as those above in argument (3) and directs Applicant to the response to argument (3) for Examiner's response.

9. In response to argument (5), Examiner respectfully disagrees. Hailpern et al. teaches wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one composite resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource). Additionally, Hailpern et al. teaches wherein the at least one service providers is a human resource and wherein the at least one service provider resource contributes more than a nominal amount of time to producing and/or making available the at least one composite resource (col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the business contributes more than a nominal amount of time making available the at least one composite resource).

10. In response to argument (6), Examiner respectfully disagrees. Hailpern et al. teaches in column 2, lines 45-51, that when the stock is very low, or the demand exceeds the capacity, encouragement is not desired, meaning decrease the demand.

Additionally, in col. 5, lines 16-42, it is taught that since there is a limited capacity or inventory, there is an upper bound on additional customers it can handle at any time and by estimating the current group size and available service capacity levels, the store can select the optimal discount level and a higher discount to attract a larger number of customers than the store can handle will only reduce profit level. Meaning, calculations are made to decrease the demand if the demand exceeds the capacity.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 31, 32, 33, 34, 35, and 36-40 are **provisionally** rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the intended field of use and a wherein clause concerning the measure of an ability to produce and/or make additional quantities available.

Claim 31 of the current application recites “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource and is not a static ability” which is not recited in claim 1 of the copending application. First, both claims recite “an ability to make available additional quantities”, and thus the fact that the measure is not static is obvious in light of this language because the “ability to make available additional quantities” is a dynamic quality. Therefore, the modification of the current application to include that the ability to make available additional quantities is not static is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Second, the limitation of the current application “wherein the measure of an ability to produce and/or make available additional quantities [...] is derived from at least one human factor resource” does not include any functional significance as to how or why the composite resource is related

to at least one human factor resource. It is well known in the art that many composite resources are associated with a human factor, such as resources being related to human scheduling, calculation, and ability to manufacture, to name a few examples. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include an association between the composite resource and a human factor resource in order to more accurately measure the ability to make available the composite resource by considering all factors associated with this ability, such as human error. Examiner notes that the fact the claimed invention in the human factor resource industry is an intended field of use that has no functional significance on the claim, as currently recited.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hailpern et al. (U.S. 6,922,672).

As per claim 31, Hailpern et al. teaches a computer-based method for capacity/demand management in human factor resource industries, comprising:

accepting, via computer, transaction parameter values for resources, wherein each resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein parameter values are received from a business regarding a resource, wherein the parameter values represent the promotional or other deal with which a resource is being sold. The resource has associated therewith a service location and a time period for the transaction. See also see column 5, lines 1-6. Hailpern et al. discloses a store, geographic location, and area);

communicating at least a portion of the transaction parameter values for at least one resource to at least one potential user of the resource (See figure 3, column 2, line 59-column 3, line 10, and column 4, lines 20-25, wherein a promotion with transaction values is communicated to a user);

modifying, in response to the communication at least one of a demand for the at least one resource and a capacity of the at least one resource, wherein when the capacity exceeds the demand for the at least one resource, the modifying includes

increasing the demand for and/or decreasing the capacity of the at least one resource (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, wherein the communication causes a modification to the demand for the resource. This is done because the capacity and inventory of the resource exceeds the demand by consumers for the resource);

wherein the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available (See column 2, lines 37-40 and 59-65, column 3, lines 1-5, 22-25 and 50-67, column 4, lines 20-45, wherein there is a timeframe from the moment the promotion is communicated to its expiration representing when the product/service is available);

wherein the at least one service availability date and time is related to the availability of at least one service provider resource comprising in part the at least one resource, wherein the at least one service provider resource is a human resource, wherein the at least one service provider resource contributes more than a nominal amount of time producing and/or making available the at least one resource (at least col. 2, lines 37-65 teach providing services, or a service provider resource; col. 2, lines 37-65 teach a business providing services, or the service providers as human resources because a business providing services inherently contains human resources providing the services on some level; and the business contributes more than a nominal amount of time making available the at least one resource);

wherein the communication occurs prior to any first assignment of other concurrently-consumed and/or concurrently-utilized resources to the at least one

potential user (See column 3, lines 1-5, wherein the promotion is communicated to the user prior to the use of a concurrent resource, where a product must be purchased with another product);

wherein the capacity of the at least one resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses capacity of a resource (i.e. good/service) at given periods of time. Capacity is the ability to produce, perform, deploy, or to make output, a maximum amount);

wherein the measure of an ability to produce and/or make available additional quantities of the at least one resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is derived from at least one human factor resource and is not a static ability (See column 2, lines 35-45 and 51-65, and column 4, lines 20-45, which discusses service capacity, wherein service is performed by human resources); and,

wherein the demand for the at least one resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See

column 2, lines 37-65, wherein demand is discussed in terms of current (demand is low) and future (moving the item over time in a dynamic environment)).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not seem to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

Claim 32 is substantially similar to claim 31 and is therefore rejected using the same art and rationale set forth above. Hailpern et al. discloses a system with means in at least figures 1C and 2, and column 3, lines 45-67.

Claim 33 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Hailpern et al. further teaches a storage device storing a program and a processor connected to the storage device and

controlled by the program, the processor operative with the program (column 4, lines 1-17).

Claim 34 is rejected using the same art and rationale set forth above in the rejection of claim 31. Hailpern et al. further discloses storing data related to resources (See column 4, lines 1-17). However, Hailpern et al. does not expressly disclose composite resources or constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Hailpern et al. further discloses memory and storing data associated with the system, as well as maintaining inventory and service capacity information concerning resources. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service pieces that come together to create the overall service. Further, relational databases are old and well known in the art and link stored data that is related together for more efficient storage and access speed. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers). Further, it would have been obvious to one of ordinary skill in the art at the

time of the invention to include internal data structures that link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources in order to increase the efficiency of storing and accessing the data by using relational database technology.

Claim 35 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Hailpern et al. further teaches receiving a responding communication from at least one user binding the at least one resource with specified transaction parameter values (See column 2, line 55-column 3, line 5, wherein the user responds to the promotion and buys a product/service resource).

As per claims 36-40, Hailpern et al. discloses that when demand exceeds the capacity for the at least one resource, the modifying includes decreasing demand for the at least one resource and/or increasing the capacity of the resource (Examiner notes that since Hailpern et al. teaches above that capacity exceeds demand, this limitation does not specifically occur (i.e. is not required). However, see column 2, lines 37-60, which discloses when demand is high, but there is low capacity/inventory).

However, Hailpern et al. does not expressly disclose that the resources are composite resources.

Hailpern et al. discloses communicating with customers when demand is low and there is capacity of a product or service to “move”. Examiner takes official notice that it is old and well known that products are made up of individual resources that come together to create the overall product and services are made up of individual service

pieces that come together to create the overall service. Further, whether the resource is a composite resource or resource does not seem to functionally effect the limitations of the claim. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include composite resources in place of the product/service resources of Hailpern et al. in order to produce the predictable results of selling the composite resource when the demand for such a resource is low (i.e. move the composite resource through communications with customers).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Landvater (Us 6,609,101) teaches promotions in response to demand and capacity of a supply chain.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALISON KARMELEK whose telephone number is (571)272-1808. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AK
7/22/08
/A. K./
Examiner, Art Unit 3623

/Beth Van Doren/
Supervisory Patent Examiner, Art Unit 3623